

# DOCKET SECTION

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, DC 20268-0001

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Docket No. R97-1

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Postal Rate And Fee Changes, 1997

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**OPPOSITION OF ALLIANCE OF NONPROFIT MAILERS  
TO MOTION OF UNITED STATES POSTAL SERVICE  
TO COMPEL RESPONSES TO  
INTERROGATORIES USPS/ANM-T1-26, 36, 41 AND 42  
(February 27, 1998)**

The Alliance of Nonprofit Mailers ("ANM") hereby replies in opposition to the Postal Service's February 20 motion to compel responses to Interrogatories USPS/ANM-T1-26 and 36, and the Service's February 23 motion to compel responses to USPS/ANM T1-41 and 42. The interrogatories read as follows:

**USPS/ANM-T1-26.** Please refer to Exhibit 1-ANM-T1 of your testimony, where you summarize the results of a survey conducted by ANM under your supervision. For each responding organization that mailed Standard A regular rate mail with nonprofit indicia, please provide:

- a. the name of the organization
- b. the organization's address;
- c. the number of pieces entered at regular rates with nonprofit indicia; and
- d. the name of the Postal facility(ies) where the mailing(s) were entered.

**USPS/ANM-T1-36.** Please provide the information requested in USPS/ANM-T1-26, for the survey responses you received since completing your testimony.

**USPS/ANM-T1-41.** Please provide all survey responses (i.e., to questions 1-10, as well as any additional comments given) for each respondent to the Alliance of Nonprofit Mailers survey of nonprofit organizations. Include any responses received since 12/30/97 and not reported in ANM-T-1.

**USPS/ANM-T1-42.** Please provide the FY1996 regular rate and nonprofit Standard (A) volumes for all mailers sent surveys, indicating which mailers responded to the surveys, and which did not respond.

ANM has responded to these questions by producing copies of all of the survey responses, with the mailers' identities redacted (Library Reference ANM-LR-1), along with the first three digits of each mailer's ZIP code. ANM has objected, on grounds of confidentiality, to producing the names, addresses or identities of the specific mailers.

In its motions to compel, the Postal Service asserts that the confidentiality interests of the survey respondents are insignificant because the Postal Service has no "preordained" intention to alter any "reasonable" operating practice "solely" in response to the situation that ANM describes (February 20 Motion to Compel at 2), and because no assurance of confidentiality appears on the "survey instrument." The Postal Service further contends that it needs to know the mailers' identities to determine the "magnitude" of "bias" in the "survey sample." These claims are unfounded. ANM discusses each one in turn.

**I. ANM HAS A SUBSTANTIAL INTEREST IN KEEPING  
CONFIDENTIAL THE SURVEY RESPONDENTS'  
IDENTITIES.**

Both ANM and its members have a compelling interest in preserving the confidentiality of the survey respondents' identities. In recent rate cases, many of ANM's members have expressed reticence to ANM representatives about supplying data on their mail volumes, mailing practices or operations to the Commission. These mailers have asserted concerns that disclosure to the Postal Service of their participation in an ANM-sponsored survey could lead to retaliation or aggravation of strained relations with the Postal Service. In response to these concerns, ANM has generally refrained from collecting such information, or has obtained it under a pledge of confidentiality concerning the identities of individual survey respondents. *See* Declaration of R. Neal Denton at 1-2 (attached).

ANM mailed out the first wave of survey questionnaires in the present case on December 5, 1997. As the Postal Service notes in its motions to compel, the questionnaires did not expressly state that the survey responses would be kept confidential. *Id.* at 2. During the same week, ANM began receiving phone calls and e-mails from recipients of the survey. The immediate reaction of virtually all of the recipients of the survey was to express concern that their individual responses not be disclosed to the Postal Service, or to ask whether ANM was abandoning its practice of keeping confidential the identities of individual respondents. *Id.*

The mailers offered two reasons for their concerns. First, they expressed fear that identifying the locations where Postal Service employees had accepted mail bearing nonprofit evidencing of postage for entry at commercial rates could subject those employees to discipline or retaliation from Postal Service management, thereby

jeopardizing the mailers' relationships with those employees. Second, the respondents were apprehensive that identifying individual mailers could lead to retaliation from Postal Service management in the form of back postage claims for past nonprofit mailings, or even revocation of the mailers' nonprofit permits. *Id.*

To every mailer who raised these concerns, the Alliance's Executive Director, Neal Denton, gave ANM's assurance that the identities of individual survey respondents would be kept confidential. Mr. Denton gave the same assurance to mailers during phone calls made to verify survey responses or deal with other questions involving the survey. While he did not talk with every survey respondent, he personally spoke with several dozen. He instructed the other ANM representatives involved in collecting survey responses to inform the respondents that their identities would be kept confidential. And he provided similar instructions to personnel at the American Museum Association and American Symphony Orchestra Association, the two outside organizations that used the survey to collect information from their own members. *Id.* at 3.

The nonprofit mailers' concerns about Postal Service retaliation are, unfortunately, not without foundation in reality. Since the demise of the revenue forgone appropriation became apparent in the early 1990s, the Postal Service has tried repeatedly to reduce if not eliminate the availability of nonprofit postal rates.

In testimony before a House appropriations subcommittee in early 1993, Postmaster General Runyon asked Congress to tighten the eligibility requirements for

nonprofit permits, or phase out nonprofit rates entirely.<sup>1</sup> In response to subsequent requests from Capitol Hill for legislative solutions to the revenue forgone issue, the Postal Service reiterated that nonprofit rates should be phased out entirely.<sup>2</sup> The Postal Service has continued to this day in its quest for legislation that would eliminate the nonprofit subclasses. *See* USPS legislative proposal, “Postal Incentive Pricing: An Alternative to H.R. 22, The Postal Reform Act of 1997” (April 21, 1997).

Moreover, the ink was hardly dry on the Revenue Forgone Reform Act of 1993 when the Postal Service set out to alter the terms of the compromise embodied in it. As the Commission is undoubtedly aware, the Postal Service adopted so restrictive a reading of the provisions allowing space advertising in third-class nonprofit publications that Congress was forced to intervene by enacting the DeConcini amendment a year later. In Docket Nos. R94-1, the Postal Service singled out nonprofit third-class mail for presort rate differentials far smaller than offered to commercial mailers, and in Docket No. MC95-1, the Service excluded nonprofit mailers from the classification reforms offered to commercial third-class mailers.

The Postal Service’s most aggressive counterattack has involved individual eligibility cases. Since the 1993, the Postal Service has asserted numerous back postage claims against nonprofit mailings based on retroactive application of eligibility restrictions that were neither expressed in the statute nor previously announced by the Postal Service (e.g., that mention of a “VISA” or “MasterCard” membership benefit

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<sup>1</sup> Statement of Postmaster General/CEO Marvin Runyon Before the House Appropriations Subcommittee on Treasury, Postal Service, and General Government Concerning the Fiscal Year 1994 Budget Request (Feb. 4, 1993) at 6.

<sup>2</sup> USPS legislative white paper, “Learning to Live Without Revenue Forgone: A Transitional Proposal” (March 11, 1993).

was not a permissible reference). Professional associations with decades-old nonprofit permits have seen those permits revoked on the asserted (and incorrect) ground that organizations with tax exemption under Section 501(c)(6) of the Internal Revenue Code are ineligible for nonprofit postal rates. The Postal Service has acknowledged that its enforcement campaign nonprofit mailers is a national policy. "It's your turn," Postal Service Chief Inspector Kenneth Inspector told ANM staff at a meeting of the Mailers' Technical Advisory Committee on June 11, 1997.<sup>3</sup> If nonprofit mailers are laboring under the belief that the Postal Service has targeted them for retaliation, their fears are not entirely without basis.

In any event, whether nonprofit mailers' concerns over retaliation from the Postal Service are well founded, those concerns are genuinely held, and they affect the willingness of individual mailers to disclose information for use in rate cases. Based on ANM's experience with this survey, and in dealing with nonprofit mailers over the past decade, it is ANM's judgment that it would lose its ability to collect meaningful data from nonprofit mailers on their mailing volumes, practices and operations if it were forced to breach its commitment of confidentiality for the identities of the individual survey respondents in this case. *Id.*<sup>4</sup>

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<sup>3</sup> See *Alliance Report* (June 13, 1997) at 1.

<sup>4</sup> Indeed, several large nonprofit mailers were so concerned about Postal Service retaliation that they declined to participate in the survey notwithstanding ANM's assurance of confidentiality. *Id.* at 3.

## **II. THE POSTAL SERVICE HAS FAILED TO IDENTIFY ANY SUBSTANTIAL INTEREST IN DISCLOSING THE SURVEY RESPONDENTS' IDENTITIES.**

By contrast, the Postal Service has failed to explain why its interests require breaching the confidentiality of the survey respondents' identities. The Postal Service contends the ANM survey is not "representative" of the universe of nonprofit mailers, and that information about the identities of the survey respondents is necessary to determine the "magnitude of this bias." February 20 Motion to Compel at 3. The Postal Service's hypothesis is that the sample of mail represented by the survey respondents, compared with the entire universe of nonprofit mail, is overweighted with mail entered at standard (A) nonprofit rates but later forced to pay back postage based on commercial rates: "publications [sic] who were assessed Standard (A) commercial rates for certain mailings, when the mailers had intended to pay more favorable nonprofit rates." *Id.* Disclosing the identities of ANM's survey respondents, however, is neither necessary nor sufficient to test this hypothesis.

To develop relevant and probative evidence that the extent of back postage payments reported by ANM's survey respondents is unrepresentative of the universe of nonprofit mail in Fiscal Year 1996, the Postal Service would need to compare (1) the frequency of back postage payments reported by the survey respondents with (2) the frequency of back postage payments made by the entire universe of nonprofit mailers, or a representative sample of that universe (e.g., all nonprofit mail entered within the three-digit ZIP codes covered by ANM's survey). Armed with the latter data, however, the Postal Service could offer evidence on the extent of the back postage phenomenon *directly*, without knowing the identities of the individual mailers

in ANM's survey.<sup>5</sup>

Lacking the latter data, the Postal Service cannot offer any relevant or probative evidence on the representativeness of ANM's sample *even if the Postal Service learns the identity of every survey respondent*. One cannot compare a sample with its universe, or with a benchmark sample, unless one knows the distribution of observations in the universe, or the benchmark sample.

The real problem here is that the Postal Service—the *only* participant in this case that possesses revenue and volume data (including data on back postage claims) for the entire universe of Standard (A) nonprofit mail—neglected to analyze the data before filing its rate request, and has refused to do so in response to ANM's discovery requests since then. Having failed to do its homework, the Postal Service is now seeking to force ANM to withdraw the only independent data in the record, or to betray its commitment to the sources of those data. The discovery rules provide no support for this strategy, however.

Finally, the balance that the Postal Service would strike between its interests and the confidentiality interests of ANM and nonprofit mailers stands in glaring contrast with the Postal Service's posture when the shoe has been on the other foot. Contrary to the Postal Service's assertion, Presiding Officer's Ruling No. MC95/1-19 is closely on point. Like the party seeking to discover the identities of the Postal

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<sup>5</sup> The Postal Service has, or should have, data in its system on every piece of nonprofit mail entered in Fiscal Year 1996 that has been subject to back postage payments since then. The Postal Service has, or should have, a mailing statement for every piece of mail entered by nonprofit mailers at commercial rates in the United States. Examining these statements, or a reasonable sample of them, would provide independent confirmation of the significance of the IOCS/RPW mismatch.



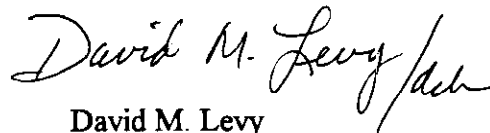
Service's survey respondents in MC95-1, the Postal Service here has failed to provide more than a generalized and unsupported claim that it needs the information. As explained above, the requested information is either unnecessary or insufficient. And in Docket No. MC93-1, *Bulk Small Parcel Service, 1992*, the Postal Service refused to disclose *any* meaningful data underlying its initial marketing survey. *See* MC93-1 Op. & Rec. Decis. ¶ 118-122 (August 25, 1993).

The present dispute differs from the disputes in MC95-1 and MC93-1 in one critical respect: the Postal Service, party seeking disclosure here, has independent means of generating relevant data without breaching the survey respondents' confidentiality. *A fortiori*, the balance weighs against compelled disclosure.

### CONCLUSION

For the foregoing reasons, the Postal Service's motions to compel should be denied.

Respectfully submitted,

A handwritten signature in cursive script that reads "David M. Levy" followed by a stylized flourish or initials.

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*Counsel for Alliance of Nonprofit Mailers*

February 27, 1998

**DECLARATION  
OF  
R. NEAL DENTON**

My name is R. Neal Denton. I am Executive Director of the Alliance of Nonprofit Mailers ("ANM"), with offices at 1211 Connecticut Avenue, N.W., Washington, DC 20036-2701. I have held my present position since 1992. Between 1986 and 1992 I was Assistant Director of ANM.

I was involved in administering the mailer survey whose results are tabulated in Exhibit ANM-T-1 to the testimony of ANM witness John Haldi (ANM-T-1). The purpose of this Declaration is to explain the commitments made by ANM to the survey respondents concerning the confidentiality of their responses.

In late November 1997, Dr. Haldi told me that he had begun to suspect that the disproportionate increases in attributable costs reported by the Postal Service for Standard (A) nonprofit mail could be due to a mismatch of cost and volume data for mail entered by nonprofit organizations with nonprofit evidencing of postage, but originally or ultimately paying commercial rates. To test this hypothesis, Dr. Haldi asked ANM to administer a survey designed by him to gain information about nonprofit organizations' mailings in Fiscal Year 1996.

In recent rate cases, many of ANM's members have expressed reticence to me and other ANM representatives about supplying data on their mail volumes, mailing practices or operations to the Commission. These mailers have asserted concerns that disclosure to the Postal Service of their participation in an ANM-sponsored survey could lead to retaliation or aggravation of strained relations with the Postal Service. In response to these concerns, ANM has generally refrained from collecting such

information, or has obtained it under a pledge of confidentiality concerning the identities of individual survey respondents.

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During the same week, I began receiving phone calls and e-mails from recipients of the survey. The immediate reaction of virtually all of the recipients of the survey was to express concern that their individual responses not be disclosed to the Postal Service, or to ask whether ANM was abandoning its practice of keeping confidential the identities of individual respondents.

The individuals with whom I spoke, or from whom I received e-mails, offered two reasons for their concerns. First, they expressed fear that identifying the localities where Postal Service employees had accepted mail bearing nonprofit evidencing of postage for entry at commercial rates could subject those employees to discipline or retaliation from Postal Service management, thereby jeopardizing the mailers' relationships with those employees. Second, the respondents were apprehensive that identifying individual mailers could lead to retaliation from Postal Service management in the form of back postage claims for past nonprofit mailings, or even revocation of the mailers' nonprofit permits. (Many of these mailers are, or recently have been, involved in contentious revenue deficiency disputes with the Postal Service.)

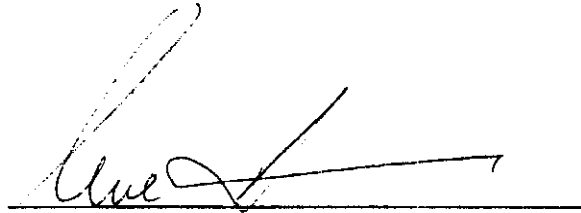
To every mailer who raised these concerns, I gave my assurance that the identities of individual survey respondents would be kept confidential. I gave the same assurance to mailers during phone calls made to verify survey responses or deal with other questions involving the survey. While I did not talk with every survey respondent, I personally spoke with several dozen. And I instructed the other ANM representatives that manned the phones in collecting data for the survey to inform respondents that their identities would be kept confidential. I provided similar instructions to personnel at the American Museum Association and American Symphony Orchestra Association, the two organizations that used the survey to collect information from their own members.

Most of the mailers with whom I spoke seemed satisfied by this assurance. Several mailers, however—including mailers that I am aware entered very large volumes of mail in Fiscal Year 1996 with nonprofit markings but paying commercial rates of postage—were unpersuaded that a confidentiality commitment would be enforced, and ultimately declined to participate in the survey.

Based on my experience with this survey, and in dealing with nonprofit mailers over the past decade, it is my judgment that ANM would lose its ability to collect meaningful data from nonprofit mailers on their mailing volumes, practices and operations if we were to breach our commitment of confidentiality for the identities of the individual survey respondents in this case.

## DECLARATION

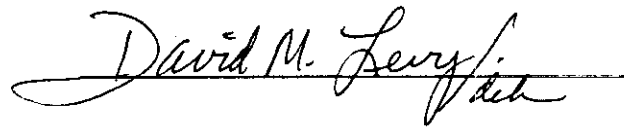
I, R. Neal Denton, declare under penalties of perjury that the foregoing statement is true and correct.

A handwritten signature in black ink, appearing to read "R. Neal Denton", is written over a horizontal line.

Dated: 2/27/98

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document on all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

A handwritten signature in cursive script, reading "David M. Levy". The signature is written in black ink and is positioned above a horizontal line.

February 27, 1998

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